

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARK E. BAKER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 213,462
<b>THE LAW COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>ST. PAUL FIRE &amp; MARINE INSURANCE</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated May 22, 1997, which denied claimant medical benefits finding claimant had proven accident but no injury on April 19, 1995, had failed to prove timely written claim, and had failed to prove timely notice within ten days of his accident, which the Administrative Law Judge found to be in June or July 1995.

**ISSUES**

- (1) Whether claimant suffered injury on April 19, 1995, as a result of a work related accident.
- (2) Whether claimant had a preexisting knee injury which was aggravated by work.
- (3) The date of accident.

- (4) Timely written claim for an injury of April 19, 1995.
- (5) Notice of accidental injuries subsequent to April 19, 1995.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing and considering the entire record, the Appeals Board finds, for preliminary hearing purposes, as follows:

The Appeals Board finds the Order of Administrative Law Judge Bryce D. Benedict should be affirmed.

Claimant has alleged multiple injuries in this single docketed case. Claimant first alleged an accidental injury on April 19, 1995, when a rock fell striking a jack hammer causing the hammer to strike claimant's left knee. Claimant took a short break and then returned to work with no additional complaints. Claimant alleged additional injury in June or July 1995 without a specific accident date, but filed an E-1 with the Division of Workers Compensation in June 1996 alleging a July 14, 1995, date of accident. Claimant was treated by James D. Gardner, M.D., on July 17, 1995, when a wheelbarrow ran over his big toe. Dr. Gardner placed claimant on light duty for three days and returned claimant to work without limitation. It is significant that on July 17, 1995, claimant had no problems with his left knee which he alleges was aggravated or injured on July 14, 1995, only three days earlier. Claimant sought no additional medical treatment for the knee until June 5, 1996. Claimant's written claim, a form E-1 Workers Compensation Application for Hearing, was filed June 4, 1996.

The Administrative Law Judge found that while claimant was involved in an accident on April 19, 1995, that incident resulted in no injury to claimant. The Appeals Board agrees with that finding. Claimant sought no medical treatment and requested no time off from work subsequent to that incident. As such the denial of benefits for claimant's failure to prove injury arising out of and in the course of his employment on April 19, 1995, is appropriate.

Claimant's allegation of additional aggravation in June and July 1995 is not supported by the evidence. The one time claimant saw a doctor on July 17, 1995, he failed to mention any ongoing problems with his knee. Claimant also failed to discuss ongoing knee problems with his supervisor, Don Garver, although Mr. Garver does remember the incident in April 1995.

Claimant's employment was terminated with respondent in January 1996 but claimant failed to seek any additional medical treatment until June 5, 1996, again an indication of no ongoing symptomatology.

K.S.A. 44-520a requires written claim within 200 days of the date of accident or the last date of medical treatment. Claimant's written claim was filed with the Division on June 4, 1996, well beyond 200 days from the April 19, 1995, date of accident. K.S.A. 44-557 requires the respondent to file an accident report with the Director of Workers Compensation within 28 days of receiving knowledge of an accident. Respondent's failure to file this accident report would extend the written claim time to one year. Even if the Appeals Board were to consider the one year time limit set forth under K.S.A. 44-557, claimant's June 4, 1996, written claim is out of time for an April 19, 1995, date of accident.

K.S.A. 44-520 requires notice of an alleged accidental injury be provided to respondent within 10 days of the date of accident. While respondent had knowledge of the April 19, 1995, accident, respondent was provided no notice of any ongoing aggravation in June or July of 1995 and no notice of a specific accident on July 14, 1995, as alleged by claimant's E-1. The first time respondent was made aware of these alleged accidental injuries was subsequent to claimant's termination in January 1996. Even if claimant were able to show just cause for his failure to provide notice as required by K.S.A. 44-520, the 75 day limitation set forth in the statute would have run by January 1996.

Therefore, the Appeals Board finds that claimant has failed to prove that he provided written claim for the April 19, 1995, date of accident as is required by K.S.A. 44-520a. Claimant has further failed to provide notice of any additional accidental injuries alleged after April 19, 1995, in violation of K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict denying claimant medical treatment dated May 22, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

---

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Ronald J. Laskowski, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director